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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939

No. 803 29

CARL A. HANSBERRY, NANNIE L. HANSBERRY, SUPREME LIBERTY LIFE INSURANCE COMPANY, JAMES JOSEPH BURKE AND ISRAEL KATZ,
Petitioners,

vs.

ANNA M. LEE, EDWARD L. GOVANUS, ESTHER GOVANUS, LOUISE G. ANDERSON, LYMAN M. ANDERSON AND KATHRYN LUTTRELL,
Respondents.

BRIEF OF ANNA M. LEE, EDWARD L. GOVANUS, ESTHER GOVANUS, LOUISE G. ANDERSON, LYMAN M. ANDERSON AND KATHRYN LUTTRELL, RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BY PETITIONERS.

ANGUS ROY SHANNON,
WILLIAM C. GRAVES,
Counsel for Respondents.

CHARLES A. CHURAN,
Of Counsel.

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CARL A. HANSBERRY, NANNIE L. HANSBERRY, SUPREME LIBERTY LIFE INSURANCE COMPANY, JAMES JOSEPH BURKE AND ISRAEL KATZ,
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BRIEF OF ANNA M. LEE, EDWARD L. GOVANUS, ESTHER GOVANUS, LOUISE G. ANDERSON, LYMAN M. ANDERSON AND KATHRYN LUTTRELL, RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI BY PETITIONERS.

STATEMENT OF FACTS.

(Corrective)

The instant petition for writ of certiorari is to review the decision of the Supreme Court of the State of Illinois which affirms the decree (Rec. 102) of the Circuit Court of Cook County, Illinois, entered in a representative or

class suit. This latter was brought by plaintiffs (respondents here) on behalf of themselves and all others similarly situated against the defendants (petitioners here). It involved a conspiracy by defendants to violate a restrictive agreement which in numerous representative or class suits in both trial and reviewing courts had been adjudicated valid and in full force and effect.

Burke v. *Kleiman,* Superior Court Case Gen. No. 567687 (Rec. 338-53); affirmed in *Burke* v. *Kleiman,* 277 Ill. App. 519; 189 N. E. 372.

Cook, et al. v. *Yondorf, et al.,* Superior Court of Cook County Illinois, Case Gen. No. 34S1261 (Rec. 416-23).

Penoyer, et al. v. *Cohn, et al.,* Superior Court of Cook County, Illinois, Case Gen. No. 34 S 16816 (Rec. 425-42).

The restrictive agreement was a covenant running with the land, duly recorded (Rec. 67), and prohibited, as specified in the agreement, ownership or occupancy by negroes of those lands in the Washington Park Subdivision, the owners of which had signed the agreement, their heirs, executors, assignees, privies, etc. The agreement itself is set forth *in haec verba* in *Burke* v. *Kleiman,* 277 Ill. App. 519.

The stipulation entered into between the parties in the trial court in the *Burke* v. *Kleiman* case proves that each and every issue raised or possible to be raised was before the Court for adjudication. The stipulation is set forth in the decree entered in that case (Rec. 65) excepting as to its last paragraph, which reads as follows (Rec. 394):

"Nothing in this stipulation contained shall be deemed to be an admission by either plaintiff or defendant as to the materiality, relevancy or compe-

tency of any of the facts herein stipulated, and the aforesaid stipulation of facts shall not prevent either party from offering further and other evidence on the issues which may be material, relevant or competent."

The Washington Park Subdivision comprises territory bout one-half mile square, is bounded on the north by e great Washington Park of Chicago, to the east by The niversity of Chicago and its affiliated activities and prop-rty ownerships, together with other white ownerships nd occupancies, to the west is now negro occupancy, to e south is now mixed occupancy.

In the *nisi prius* state court in the case upon which the tition herein is founded, the plaintiff moved for a tem-orary injunction, the defendants moved to dismiss the mplaint, Judge Michael Feinberg ordered that the in-nction as prayed issue, defendants perfected an inter-cutory appeal, the Appellate Court affirmed the injunc-on order (*Lee* v. *Hansberry*, 291 Ill. App. 517). Upon turn to the Circuit Court answers were duly filed by e defendants, who also filed motions to dissolve the tem-orary injunction. The plaintiffs filed motions to strike arts of the answers. The answers, among other things, enied for the first time the execution, notarization, re-rdation, validity—the existence—of the restrictive greement. Amended answers to the same effect were ed by the defendants. Plaintiffs duly filed objections , and motions to strike, parts of these. In apt rule time aintiffs also filed their reply to all of these answers and nended answers. In this reply plaintiffs pleaded, in de-iled particularity, *res judicata* (Rec. 58-69):

(A) As by estoppel by judgment in bar as to those of the defendants who had signed the restrictive agree-

ment or who were assignees, successors or privies to those who had signed it; and

(B) As by estoppel by verdict as to all of the defendants to dispute or contest the execution, the delivery, the existence, compliance with the conditions precedent, and the enforceability of the restrictive agreement sued upon.

With the record in such shape, argument started on the various motions and settlement of pleadings and proceeded until the court elected to reserve his rulings on all of these questions, to at once go to a final hearing on the merits, and to settle all questions in and by his final decree. His order directing this procedure appears in the record (p. 76), as follows:

> "This matter coming on to be heard on the plea of counsel for plaintiffs that the case of *Burke* v. *Kleiman* be held *res judicata* as to the issues involved herein on certain objections filed to the answers and motions of the several defendants to dissolve the temporary injunctions heretofore issued herein, the court having examined the pleadings herein and heard the arguments of counsel for the respective parties and being fully advised in the premises,
>
> It Is Hereby Ordered that the matter proceed to a hearing and trial on the merits, and the rulings of the court upon the above plea, objections and motions be reserved until after the cause has been heard on its merits".

The hearing on the merits was had; the final decree was entered (Rec. 102). It adjudges the restrictive agreement valid, in full force and effect, a covenant running with the land, and not in contravention of the Costitu-

tions of the United States or State of Illinois, nor of the public policy of either, nor did it violate the rule against unlawful restraint of alienation or the rule against perpetuities. It sustained, on the proofs introduced, the plea of *res judicata* contained in plaintiffs' reply. It enforced specific performance of the restrictive agreement, as prayed in the complaint. It made permanent the temporary injunction.

The facts as to the petitioner-defendant Katz are: He was a signatory to the restrictive agreement; yet that he swore he would sell to negroes (Rec. 169) and his attitude and fixed purpose to violate the restrictive agreement are affirmed by his declarations against interest to that effect contained in his personally verified answer and rejoinder (Rec. 78, 91-100).

The bald fact as to the petitioner-defendant Burke is, that while he swore in his amended answer and rejoinder to a series of self-serving allegations which, if proved (despite their illustration of his true character), would be injurious to the plaintiffs' cause; yet he never appeared at the trial to testify in substantiation of any one of them. The logical deduction is obvious.

The facts of record in this cause concerning the case of *Burke* v. *Kleiman* consist alone of the pleadings, stipulation, decree therein and affirmance thereof by the Appellate Court, plus the oral testimony of Isaac Kleiman and James L. Hall, two of the defendants in that suit (Rec. 64, 65, 237, 374). No fraud or collusion is deducible from their testimony. None existed, as the Supreme Court of Illinois found as a matter of fact in its opinion.

The facts concerning the comments of the trial judge contained in his so-called opinion delivered prior to his

entry of the final decree in the Circuit Court, and which are so distortedly used by petitioners in their attempt to impute fraud and collusion as existing in the *Burke* v. *Kleiman* litigation, are as follows:

The pleadings, motions, counter-motions, supporting and opposing affidavits had become so many and the arguments upon them had become so complicated and involved, that in the middle of this argument the Court called a halt and adopted the extra-ordinary procedure (*ante,* 76) of forcing the litigants to a trial on the merits without any pleadings having been settled. Confusion on that trial immediately resulted, but prior to the introduction of any evidence by the defendants, and with the consent of all parties in court, the plaintiffs, by their counsel, made the following general and specific objection (Rec. 400):

> "In order to expedite matters as far as possible so there won't be a constant running of objections here any more than is necessary, I want to make a general objection such as the other side did in reference to our testimony—that is, if it is agreeable to the Court and counsel to have a general objection and have it carried through without my having to repeat it each time—in this behalf.
>
> "That as to the defendants Israel Katz, Carl A. Hansberry and Nannie L. Hansberry, J. B. Crook, Hallie C. Crook, James Joseph Burke and Harry H. Pace, each of whom is shown by the record to have either signed the Restrictive Agreement introduced in evidence as Plaintiffs' Exhibits 5, 5-A, B & C, or are persons in privity of estate as grantees either direct or remote, of persons who had signed the Agreement, we object to them, or any witnesses for them, or any documentary evidence which seeks to attack the validity of that Agreement as being estopped by reason of being grantees and in privity of estate.

"Then as to all of the defendants we object to any testimony by them or on their behalf which in any way seeks to attack or deny the execution, the delivery, the existence, the compliance with the conditions precedent, the enforceability of the Restrictive Agreement admitted in evidence as Plaintiffs' Exhibits 5 and 5-A, B, C, because of the estoppel by verdict against each and all of the defendants, from attacking the validity, the delivery, the execution, the existence and enforceability of that agreement, by reason of *res judicata* from the judgment and the decree of the Superior Court of Cook County, Illinois, entered in the case of *Burke* v. *Kleiman, et al.*, Gen. No. 567687, entered on October 2, 1933, being a class suit, which decree also was affirmed by the Appellate Court on November 27, 1934, Appellate Court for the First District case No. 37522 entitled there *Burke* v. *Kleiman, et al.*"

The Court: "I think that is very satisfactory."

Then followed all the testimony of the defendants, subject to that objection. Subsequently the plea of *res judicata,* and the above objection were sustained. Yet the illogical and unfounded comments of the trial judge remained in the so-called opinion. Plaintiffs in their brief filed cross-errors in reference thereto, and particularly to the comments concerning the activities of the defendant Burke in connection with the institution and prosecution of the suit of *Burke* v. *Kleiman* concerning which there was not a scintilla of evidence in the record. Plaintiffs asked the Supreme Court of Illinois to make in its opinion appropriate comment upon and disposition of the unfounded statements complained of in this cross-error, which that court did fully in its decision (Appendix—Petition 47, 51).

SUMMARY.

I.

A. The opinion of the Supreme Court of Illinois here sought to be reviewed is founded upon the doctrine of res judicata based upon prior decisions in that State. Whether the judgment of a state court is res judicata is purely a question of state law.

Oklahoma Pkg. Co. v. *Oklahoma Gas & El. Co.*, 84 L. Ed. 194-199.

Oklahoma Pkg. Co. v. *Oklahoma Gas & El. Co.*, 84 L. Ed. 329-332.

Union Planters Bank v. *Memphis*, 189 U. S. 71, 75.

Covington v. *First National Bank*, 193 U. S. 100, 109.

Wright v. *Georgia R. & Banking Co.*, 216 U. S. 420, 429.

B. Questions of state law do not engage the due process clause of the 14th Amendment.

Enterprise Irrigation District v. *Canal Co.*, 243 U. S. 157 (165).

Sayward v. *Denny*, 158 U. S. 180, 186.

Central Land Co. v. *Laidley*, 159 U. S. 103, 112.

C. State court's decisions thereon are controlling.

Preston v. *Chicago,* 226 U. S. 447, 450.

St. Louis & Kansas City Land Co. v. *Kansas City,* 241 U. S. 419 (427).

Old Colony Trust Company v. *City of Omaha,* 230 U. S. 100, 116.

II.

Neither by the majority opinion nor by the dissenting opinion of the highest court of the State does it appear that a Federal question was raised or actually decided, or that the decision of any Federal question was essential to the judgment rendered.

Opinion, Rec. 464-473.

III.

Although the Supreme Court of the United States may consider the entire record in passing upon the question of jurisdiction to review the case, findings of fact are not reviewable. The state court opinion finds as facts, and holds, that there was no evidence of fraud or collusion in the Burke v. Kleiman case and no showing of fraud or collusion in procuring the stipulation of facts, or that there was not an actual controversy in that case.

This Court has repeatedly held that it accepts the findings of the state court upon matters of fact as conclusive and binding upon it.

Waters-Pierce Oil Co. v. *Texas,* 212 U. S. 86, 97.

Miedreich v. *Lauenstein,* 232 U. S. 236, 243.

Kerfoot v. *Farmers & Merchants Bank,* 218 U. S. 281, 288.

IV.

To confer jurisdiction on this Court it must appear affirmatively from the record not only that a Federal question was presented for decision to the highest court of the State but that its decision of the Federal question was necessary to the determination of the cause; that the Federal question was actually decided or that judgment, as rendered, could not have been given without deciding it.

Southwestern Bell Tel. Co. v. *State of Oklahoma,* 303 U. S. 206, 212.

Eustis v. *Bolles,* 150 U. S. 361, 368.

Pierce v. *Somerset Railway,* 171 U. S. 641, 648, 649.

Rutland R. R. v. *Central Vermont R. R.,* 159 U. S 630.

Seneca Nation v. *Christy,* 162 U. S. 283, 289.

Heim v. *McCall,* 239 U. S. 175.

Harding v. *Illinois,* 196 U. S. 78, 85.

Clark v. *McDade,* 165 U. S. 168, 172.

Fowler v. *Lamson,* 164 U. S. 252.

Mo. Pac. v. *Fitzgerald,* 160 U. S. 556, 576.

Cal. Powder Wks. v. *Davis,* 151 U. S. 389-393.

V.

Where the judgment of a state court rests upon two grounds, one of which is Federal and the other non-Federal in character, the jurisdiction of this Court fails if the non-Federal ground is independent of the Federal ground and adequate to support the judgment.

Fox Film Corporation v. *Muller*, 296 U. S. 207, 210.

Wood v. *Chesborough*, 228 U. S. 672, 679.

Consolidated Turnpike Co. v. *Norfolk & O. V. R. Co.*, 228 U. S. 596, 599.

Interurban Ry. Co. v. *Olathe*, 222 U. S. 187, 190.

Gaar S. & Co. v. *Shannon*, 223 U. S. 468.

Berea College v. *Kentucky*, 211 U. S. 45, 53.

Eustis v. *Bolles*, 150 U. S. 361, 366.

Enterprise Irrig. Dist. v. *Canal Co.*, 243 U. S. 157, 163, 164.

Lynch v. *N. Y. ex rel. Pierson*, 293 U. S. 52, 54.

Lowry v. *Silver City Gold & Silver Mining Co.*, 179 U. S. 196, 198.

Browne v. *Union Pacific Ry. Co.*, 267 U. S. 255, 259.

VI.

A. The judgment of the Supreme Court of Illinois rested upon general law, to-wit: The doctrine of res judicata and estoppel by verdict, and it held that the decrees entered in the Burke v. Kleiman case (and other cases in the Superior and Circuit Courts) settled the question of the due execution and validity of the Restrictive Agreement, and that these cases, being representative or class actions, the defendants were bound by these decrees. Such judgments, based upon questions of general law, are not subject to review on the grounds here advanced.

Chouteau v. *Gibson,* 111 U. S. 200, 201.

San Francisco v. *Itsell,* 133 U. S. 65.

California v. *Holladay,* 159 U. S. 415.

Opinion in instant case, Rec. 464.

Decree in *Burke* v. *Kleiman,* Rec. 338.

Decree in *Cook* v. *Yondorf,* Rec. 416.

Decree in *Penoyer* v. *Cohn,* Rec. 425.

Burke v. *Kleiman,* 277 Ill. App. 519.

Lee v. *Hansberry,* 291 Ill. App. 517.

B. The opinion of the Supreme Court of Illinois as to res judicata, estoppel by verdict and representative or class actions followed a long line of established decisions of that Court.

Groves v. *Farmers State Bank,* 368 Ill. 35, 40, 45, 47.

Leonard v. *Bye,* 361 Ill. 185, 190, 192.

People ex rel. v. *Circuit Court of Washington County,* 347 Ill. 34.

Greenberg v. *Chicago,* 256 Ill. 213, 215, 219.

Harmon v. *Auditor Public Accounts,* 123 Ill. 122.

VII.

This Court will decline jurisdiction of certiorari where the State court followed previous decisions of the Supreme Court of the United States, or if the Federal question, if any, has been settled by previous decisions of the Federal courts.

Minn. St. P. & St. L. M. R. Co. v. *Merrick,* 254 U. S. 376, 378.

Mo. Pac. R. R. v. *McGrew Coal Co.,* 256 U. S. 134, 135.

Miller & Lux & Sacramento v. *Drain. Dist.,* 256 U. S. 129, 130.

Zucht v. *King,* 260 U. S. 174, 176.

Quinn v. *U. S.,* 260 U. S. 438, 440.

VIII.

The only Federal question raised by the pleadings in the State court was the constitutionality of a Restrictive Agreement entered into by over five hundred property owners in Chicago, restricting their real estate against use, occupancy or ownership by negroes. Such restrictive agreements have been repeatedly sustained against attack that they are unconstitutional or against public policy, not only in state courts, but in this Court and in other Federal courts.

Corrigan v. *Buckley,* 271 U. S. 323, 329-330.

Corrigan v. *Buckley,* 299 Fed. 899, 901.

Torrey v. *Wolfes,* 6 Fed. (2d) 702, 703.

Russell v. *Wallace,* 30 Fed. (2d) 981.

Cornish v. *O'Donoghue,* 30 Fed. (2d) 983, 984.

Grady v. *Garland,* 89 Fed. (2d) 817.

Ridgway v. *Cockburn,* 296 N. Y. S. 936.

Parmalee v. *Morris,* 218 Mich. 625.

Burke v. *Kleiman,* 277 Ill. App. 519.

ARGUMENT.

The question of the validity of the Restrictive Agreement here involved first came before the courts for adjudication in 1932, in the case of *Burke* v. *Kleiman* in the Superior Court of Cook County, Illinois, Gen. No. 567687. That was a representative or class suit. The parties thereto entered into a stipulation of facts, the last paragraph of which reads (Rec. 394):

> "Nothing in this stipulation contained shall be admitted to be an admission by either plaintiff or defendant as to the materiality, relevancy or competency of any of the facts herein stipulated, and the aforesaid stipulation of facts shall not prevent either party from offering further and other evidence on the issues which may be material, relevant or competent."

So that nothing was withheld by the parties to restrict or limit the court's jurisdiction in the determination of the question of the validity of the Restrictive Agreement. The Superior Court decreed that agreement valid (Rec. 338). That decree was affirmed in *Burke* v. *Kleiman,* 277 Ill. App. 519, wherein the Court says (at p. 533):

> "Appellants have not contended that the restrictions violate any of the amendments to the United States constitution, nor that they are against public policy, but complainant has seen fit to argue, at some length, that the restrictions do not violate the fifth, thirteenth or fourteenth amendments to the United States constitution and that they are not against public policy. While it is entirely unnecessary, because of appellants'

attitude, for us to consider this argument, we may state that the following authorities cited in support of it sustain the position of complainant: *Corrigan* v. *Buckley,* 299 Fed. 899; *Corrigan* v. *Buckley,* 271 U. S. 323; *Parmalee* v. *Morris,* 218 Mich. 625; *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724; *Los Angeles Investment Co.* v. *Gary,* 181 Cal. 680; *Koehler* v. *Rowland,* 275 Mo. 573. Complainant also cites *People* v. *Forest Park Cemetery Co.,* 258 Ill. 36, wherein the court held that the refusal of a cemetery corporation to sell a lot to a colored person and admit the body of his wife for burial, solely upon the ground of his color, is not a violation of the rights of such person under the constitution of this State, nor under the fourteenth amendment to the Federal constitution, which applies only to acts of the State."

The validity of the Restrictive Agreement again was decreed in two other representative or class suits (*ante* , 12).

Thereafter petitioners herein entered into a conspiracy threatening to violate, and did violate, the Restrictive Agreement. All of them, excepting the Supreme Liberty Life Insurance Company, are members of the same class as the plaintiffs in the foregoing action. They, or their remote grantors, signed the Restrictive Agreement and are bound thereby. The conspiring insurance company was prevented from disputing the validity of the Restrictive Agreement under the doctrine of estoppel by verdict pleaded and sustained.

Plaintiffs in the instant case in the State court (they are members of the same class), on behalf of themselves and all others similarly situated, filed their complaint to restrain the defendants from violating the Restrictive

Agreement and for other relief. Defendants attacked the validity of the Restrictive Agreement on various grounds and plaintiffs pleaded *res judicata,* based upon the aforesaid prior state decisions. As appears from the opinion in *Burke* v. *Kleiman, supra,* no Federal question was involved in them, and, accordingly, the decisions of the trial and the Supreme Court of Illinois that those cases constituted *res judicata* as to the validity of the Restrictive Agreement, are based upon purely general and state law and involve no federal question. Also, the decision itself of the Supreme Court of Illinois, that the question of the validity of the Restrictive Agreement is *res judicata,* is purely a question of state law. No federal question is involved.

Oklahoma Packing Co. v. *Oklahoma Gas & El. Co.,*
84 L. Ed. 194, 199.
Oklahoma Packing Co. v. *Oklahoma Gas & El. Co.,*
84 L. Ed. 329, 332.

We desire to say a further word in reference to the continued effort of the petitioners to cast doubt upon the decree in *Burke* v. *Kleiman* alleging it was secured by fraud and collusion. We repeat that there is not a word of evidence of fraud or collusion in the record. In addition to the fact that the defendant Burke did not testify, a reading of his answer, in which his self-serving statements appear, shows that even he did not claim any fraud or collusion in the bringing of the *Burke* v. *Kleiman* case. He says in his answer (Rec. 44) that about four months prior to the "alleged transaction" be *believed* the purported agreement not to be in existence or valid. The "alleged transaction" referred to the time (May, 1937) when Burke introduced the defendant J. B. Crook to an officer of the First National Bank of Englewood as a bona fide buyer of the 6140 Rhodes Avenue property, which de-

fendant Hansberry afterwards acquired and which is the property involved in the instant case. The decree in the *Burke* v. *Kleiman* case was entered on Oct. 2, 1933 (Rec. 64), or about there and one-half years before the transaction in regard to the Hansberry property. Burke was the husband of Olive Ida Burke, the defendant in the *Burke* v. *Kleiman* case (Rec. 44), and he says in his answer (Rec. 44) that he purchased his property through his wife in the belief that the purported agreement was valid, and "that in said suit he acted in good faith" (Rec. 45).

Restrictive agreements identical in substance with the one in the instant case are held as constitutional and not against public policy in the federal courts. We quote briefly from two cases:

Corrigan v. *Buckley*, 299 Fed. 899, 901.

> "We are not dealing with the validity of a statute, or municipal law, or ordinance; nor are we concerned with the right of a Negro to acquire, own, and use property; nor are we confronted with any pre-existing rights which are affected by the covenant here in question. *The sole issue is the power of a number of landowners to execute and record a covenant running with the land,* by which they bind *themselves,* their heirs and *assigns,* during a period of 21 years, to prevent any of the land described in the covenant from being sold to, leased to, or occupied by Negroes. • • •
>
> "The constitutional right of a Negro to acquire, own and occupy property does not carry with it the constitutional power to compel sale and conveyance to him of any particular private property. *The individual citizen, whether he be black or white, may refuse to sell or lease his property to any particular indi-*

vidual or class of individuals * * * What is denied one class may be denied the other. There is therefore, no discrimination within the civil rights clauses of the constitution. *Such a covenant is enforceable, not only against a member of the excluded class, but between the parties to the agreement.* Our attention has not been called to any decision of the Supreme Court of the United States involving the exact question before us. *It has however been before the Courts of the States, where it has been held that similar covenants against ownership or occupancy by Negroes are neither unconstitutional nor contrary to public policy.* (Citing *Parmalee* v. *Morris,* 218 Mich. 625; *Queensboro Land Co.* v. *Cazeaux,* 136 La. 724; *Los Angeles Investment Co.* v. *Gary,* 181 Cal. 680, and *Koehler* v. *Rowland,* 275 Mo. 573.)'' (Italics ours.)

The case was appealed to the Supreme Court of the United States wherein the appeal was dismissed in

Corrigan v. *Buckley,* 271 U. S. 323

which at p. 329 holds:

''Under the pleadings in the present case the only constitutional question involved was that arising under the assertions in the motions to dismiss, that the indenture or covenant which is the basis of the Bill is 'void' in that it is contrary to and forbidden by the Fifth, Thirteenth and Fourteenth Amendments. *This contention is entirely lacking in substance or color of merit.* The Fifth Amendment is a limitation only upon the powers of the general government, *Talton* v. *Mayes,* 163 U. S. 376, 382, and is not directed against the action of individuals. The Thirteenth Amendment denouncing slavery and involuntary servitude, that is, a condition of enforced, compulsory service of one to

another, *does not in other matters* protect the individual rights of persons of the Negro race. * * * And the prohibitions of the Fourteenth Amendment have reference to state action exclusively and not to any action of private individuals. (Citing cases.) It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment. Civil Rights cases 109 U. S. 3, 11. *It is obvious that none of these Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property; and there is no color whatever for the contention that they rendered the indenture void.* * * * We, therefore, conclude that neither the *constitutional* nor *statutory* questions relied on as grounds for the appeal to this Court have any substantial quality or color of merit, nor afford any jurisdictional basis for the appeal." (Italics ours.)

In the *Corrigan* case, as in the instant case, the point was raised that the agreement violated Sections 1977 and 1978 of the United States Revised Statutes. This Court disposed of that contention in the following language (p. 331):

"Assuming that this contention drew in question the 'construction' of these statutes, as distinguished from their 'application' it is obvious upon their face that while they provide *inter alia*, that all persons and citizens shall have equal right with white citizens to make contracts and acquire property, they, like the Constitutional Amendment under whose sanction they were enacted, do not in any manner prohibit or invalidate contracts entered into by private individuals in respect to the control and disposition of their own property."

Following the *Corrigan* cases, the Federal courts have sustained the validity of such restrictions in:

Torrey v. *Wolfes,* 6 Fed. (2d) 702.
Russell v. *Wallace,* 30 Fed. (2d) 981.
Cornish v. *O'Donoghue,* 30 Fed. (2d) 983.

It is respectfully submitted that the questions raised by the petitioners on which the decision of the cause depends, are so unsubstantial as to not need further argument. We therefore respectfully urge that the petition for certiorari be denied.

ANGUS ROY SHANNON,
WILLIAM C. GRAVES,
Counsel for Respondents.

CHARLES A. CHURAN,
Of Counsel.

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